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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,949	08/08/2001	Kazuhiro Shimura	P100158-00040	2066

23353 7590 02/18/2004

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EXAMINER

MAKI, STEVEN D

ART UNIT PAPER NUMBER

1733

DATE MAILED: 02/18/2004


Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/923,949

Applicant(s)

SHIMURA, KAZUHIRO 

Examiner

Steven D. Maki

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: new issues: see advisory action attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see advisory action attachment.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1, 3, 4, 6 and 19.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: Interview Summary (02/12/04)

## Advisory Action Attachment

new issues

The new issues include (1) adding "as a reference" to claim 1; (2) changing "second surface length that remains constant" to --second surface shape that remains constant-- and (3) in claim 6, changing "wherein a surface shape of said at least one of the first cavity and said second cavity is a quadrilateral having two pairs of opposite sides of respectively the same length, and one of said two pairs is made constant and the other is made to change" to --wherein the first and second surface shapes are in a quadrilateral having a pair of long sides and a pair of short sides respectively, and the pair of long sides of the second surface shape is made constant in the depth direction from the tread surface, and the pair of long sides of the first surface shape is made to change in the depth direction from the tread surface--. The remaining changes do not raise new issues.

In the after final amendment, applicant asserts that the "amendments to the subject claims do not incorporate any new subject matter into the claims" (page 4 of response filed 1-22-04). The examiner disagrees since none of the previously considered claims required (1) the new subject matter in claim 1 of the limitation of "as a reference", (2) the new subject matter in claim 1 of the subject matter of the second surface shape (in contrast to merely the second length) remaining constant or (3) the new subject matter in claim 6 of the pair of long sides of the second surface shape being made constant whereas the pair of the long sides of the first surface shape being made to change.

remarks

Applicant's argument that accurate measurement of wear cannot be attained according to Awaya is not persuasive since the unclaimed intended use of determining tread wear using image data of the first cavity and second cavity fails to require tread structure not disclosed by Awaya. In other words, applicant's arguments regarding Awaya are not commensurate in scope with claim 1, which fails to require "attaining accurate measurement of wear".

Applicant's argument that Havens slits and Japan 613's holes have no function as a wear indicator is not persuasive since claim 1 fails to require the second cavity to have a function as a wear indicator.

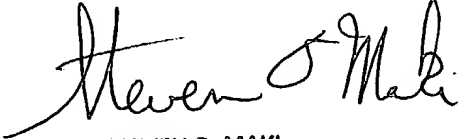
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven D. Maki  
February 12, 2004

  
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PRIMARY EXAMINER  
GROUP 1300  
2-12-04  
AU 1733